

MINUTES
REGULAR WORKSESSION
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA
YUMA CITY HALL
ONE CITY PLAZA, YUMA, ARIZONA
December 1, 2009
5:05 p.m.

CALL TO ORDER

Mayor Nelson called the City Council meeting to order.

Councilmembers Present: Shoop, Mendoza, Beeson, McClendon, Nicholls, Johnson and Mayor Nelson
Councilmembers Absent: none
Staffmembers Present: City Administrator, Mark Watson
Deputy City Administrator, Bob Stull
Police Chief, Jerry Geier
City Attorney, Steven W. Moore
Director of Parks & Recreation, Becky Chavez
Purchasing and Contracts Manager, Bill Pfannenstiel
Finance Director, Pat Wicks
Various department heads or their representatives
City Clerk, Brigitta M. Kuiper

I. SUMMARY OF CURRENT EVENTS

Watson stated that money is available to local contractors through the Community Development Block Grant for repair and rehabilitation of homes in the community. He encouraged local contractors to contact the Community Development Office for further opportunities.

II. REGULAR CITY COUNCIL MEETING AGENDA OF DECEMBER 2, 2009

Motion Consent Agenda Items: B6 Arizona Department of Homeland Security - Operation Stonegarden, Overtime & Mileage; B7 Arizona Department of Homeland Security - Operation Stonegarden, Equipment; and B8 Arizona Department of Homeland Security - Operation Stonegarden, Supplemental Equipment

Geier stated Operation Stonegarden funding has been received by the City since 2004, however, in light of the poor economy Geier wanted to explain the overtime and equipment purchases.

- Overtime
 - Funding guidelines allow money to be used while working in cooperation with the Border Patrol
 - Increase patrol efforts throughout the City.
 - Patrols are based on Border Patrol intelligence
 - Focus varies from drug activity to illegal immigrants to warrants
 - Currently four to six officers are utilize for three shifts a day
 - 24 hours/7 days a week

- There are strict guidelines for use of the money
 - Must be used in cooperation with Border Patrol
 - Must be used for issues effecting the City of Yuma
- Operation Stonegarden statistics since March 2009
 - 88 felony arrests
 - 363 misdemeanor arrests
 - Recovered 23 stolen vehicles
- Equipment
 - Purchases in support of, or tied to Operation Stonegarden activities
 - Necessary items have already received approval through Homeland Security

Resolution R2009-89 Housing Authority of the City of Yuma

Moore: Resolution R2009-89 is pursuant to a change in State law which allows the City of Yuma Housing Authority (HACY) to hold title to property in its own name; two properties are affected.

Ordinance O2009-69 Exchange and Acquisition of Real Property: Yuma Art Center Expansion

Chavez presented the following:

- Art Center designed to be a 2-phase construction project
 - Phase 1
 - Construction of the two story Art Center that includes 4 galleries, black/white photography dark room, 2 small multi-purpose class rooms and administrative offices
 - Offices provided for two outside agencies: Yuma Fine Arts Association and Cultural Council of Yuma
 - Completed in 2004 at a cost of six-million dollars
 - Phase 2
 - Renovation of Historic Yuma Theatre and United Building
 - Projected to cost six-million dollars; this projection was made in 2004
- Concerns of finishing Phase 2
 - Money
 - Closing of the theatre at a time when audience participation is at its peak
- Concerns of not finishing Phase 2
 - Space issues
 - Friction of using United Building for performer's support space as well as ceramics program
- Alternatives
 - Purchase more space
 - Funding from Arts & Culture Impact Fees that have a deadline of 2011 to expend
 - 270 S. Main Street – negotiated price from \$389,000 to \$240,000 and trade for City property valued at \$63,000

Discussion

Shoop: Has the building had recent interior upgrades? **Chavez:** Yes, a new roof and concrete flooring. The building is also set up for a dance room.

Beeson inquired if consideration was given to the North End Collectables store as it is closer to the Art Center. **Chavez:** Yes. However, there is less space and the building is in poor condition. It was projected to need \$161,000 in repairs for the City to utilize. **Chavez** noted, in comparison, the United Building does not connect to the other buildings. The idea is to leave the performing space in the United Building and move the studios to the new location.

Mendoza clarified the funding source is coming from the Arts & Culture Impact Fees and must be spent specifically on Arts & Culture projects only. **Chavez** confirmed this is correct and stated the funds must be spent within a 6-year period or the City could lose the money.

Nicholls: Will the City need additional funds to customize this building? **Chavez:** The building is basically ready-to-go; however, the floor will need some grading.

RATIFICATION OF ACTION: Resolution R2009-88 Intergovernmental Agreement: Arizona Department of Transportation - Area Service Highway

Nicholls declared a conflict of interest on this item.

Kuiper explained that due to the improper posting of the November 18, 2009 City Council agenda, Resolution R2009-88 will be ratified. This process will retroactively validate the action to November 18, 2009. Ratification has three statutory requirements: 1) Clear statement added to agenda, 2) Written detail of item being ratified, and 3) Agenda posted 72 hours in advance – all of these requirements have been met.

Ordinance O2009-64 Annexation Area No. A2009-03: Avenue 9 1/2 E and 32nd Street
Ordinance O2009-67 Annexation Area No. A2009-13: East Mesa at Avenue 9E

Watson: After further review of annexations A2009-03 and A2009-13, staff is recommending the annexations be withdrawn; a motion will be available on the dais tomorrow.

III. STATE LEGISLATIVE UPDATE

Mayor Nelson introduced Chuck Coughlin and Anne Hamilton, the City's lobbyists.

Coughlin presented the following information:

- The Yuma community has several difficult decisions to make over the next year which are magnified at the State level.
- This past year the lobbyists were helpful in getting several Yuma projects moved forward.
 - Transportation funding, secured through ADOT, of \$11.5 million for the 16th Street project

- There were many attempts in the last legislative session to alter or amend ways municipalities perform economic development work
 - These can impact the City on how business is conducted
 - The efforts will be addressed in the next legislative session
- Lobbying efforts defeated legislation in the last session which would have overturned existing case law with regards to a Yuma downtown redevelopment projects and the intermingling of schools and churches in the downtown area.
- The next session will be primarily about the State budget
 - Jobs, economic opportunities and economic development will be secondary.
- The Legislature has just concluded their 4th special session of the year
 - Successfully cut an additional \$450 million in budget cuts
 - K-12 education
 - Difficult to cut due to stimulus funding
 - Federal stimulus funds expire next year
 - 55% of the State's budget is K-12 and higher education; 18% (and growing) is for Health Care programs for the poor; 7-10% for Department of Corrections
- Another special session is to be called prior to Christmas to address:
 - \$1.5 billion shortfall for the 2010-2011 budget
 - The 2011-2012 deficit is approx \$3 billion, not counting roll-overs
 - Including the current roll-overs, the state is at a \$4 billion deficit
- The State shared revenues are coming in much lower than in the past
 - The 2010-2011 projected decline of \$155 million is based on initial projections
 - The City will see a continual decline for approximately the next two years, as there is a two year lag time of receiving revenues from the State.
- State Land Trust Reform is an item of interest for the State and community
 - Items may be moved forward to the ballot from this discussion
- Cost saving ideas were discussed with Mayor Elect Krieger
 - Eliminating State mandated programs
 - Options for the City to be more flexible in providing services to the community
 - How to deal with budget issues

Discussion

Johnson inquired if the State had taken a portion from the cities share of the Vehicle License Tax?
Coughlin: The Governor was opposed to it and a portion was vetoed. The Governor understands that cities are the economic engines of the community and are on the forefront of generating revenue, which also means that cities are on the forefront of losing it when revenues decline. There was support from legislative leaders to forward a constitutional amendment that would protect some of the non-general fund revenues in the future. Budget roll-overs and fund sweeps have been fairly exhausted to this point. Now it's a question of borrowing to maintain, cutting programs and submitting a question to the voters of how much government they want to pay for.
Johnson: Is there any chance of the City getting through these next two fiscal years without the legislature taking tax monies that the City is entitled to?
Coughlin: After the State cut a billion dollars out of its funding there is still a \$1.5 billion budget deficit, and a larger anticipated deficit for the next fiscal year. This is a good reason for City Councils and people in communities to be heard. The thoughtfulness of our actions now will have a great bearing on how quickly the State recovers.

Nicholls asked Coughlin to elaborate on potential attacks for economic development options.

Coughlin: There is litigation regarding the Goldwater Institute on incentives, referred to as *The Whisper Case*. This was the current law that the courts interpreted. Essentially it said a City can incentivize things where the City gets more than it gives. However, that becomes a legislative discussion as to how one defines "what is received in return". A ruling should be issued this month; guidance from the Supreme Court will be forthcoming.

Continuing, Coughlin stated there will be a sustained effort to address other economic incentive tools. One development incentive effort used by cities is the government property lease excise tax. This is a tool that City Councils use to enhance economic development. However, this tool has been under attack for the past three sessions. The legislature needs to understand how cities use economic incentive tools, what projects have been created as a result of these tools, and what projects would never make it if the tool was not available.

IV. LOCAL PREFERENCE IN AWARDING PUBLIC BIDS

Moore briefed City Council on the following:

- Electors approved a local preference at the December 1, 1981 election
 - By law the Governor must sign the Charter change for the voted item to be effective
 - The Attorney General would not recommend the Governor sign the change unless the City passed guidelines on the interpretation of local preference as contained in Ordinance O2090.
 - Ordinance O2090 passed on September 22, 1982
 - Ordinance O2090 has three parts
 1. City agreed that local preference would not be applied cumulatively to any State preference
 2. The preference would not be applied to bids/contracts that are governed by A.R.S. §34-241
 - A.R.S. §34-241 governs contracts that are paid for from public funds to contractors who are licensed under Title 32, Chapter 1 or 10, and who have satisfactorily performed
 - Chapter 1 applies to architects & engineers
 - Chapter 10 applies to contractors
 3. If a conflict exists between the Yuma City Charter and A.R.S. §34-241, the State Statutes control
 - City Code Section 36-37
 - No local preference unless approved by City Council
 - Charter amendment changed process to follow State law
 - By State law, anything over \$50,000 goes to City Council for approval.
 - This creates a gap of no local preference on items under \$50,000

Moore: After local preference passed, in 1990 there was a case heard at the Supreme Court that found the State preference violated the equal protection guarantee of the Constitution and the prohibition on local and special laws granting privileges to corporations. That decision resulted in many jurisdictions, including the State, not having a local preference. The City determined that the City's authorizing

documentation was sufficiently different than other jurisdictions and the State, so the City continued to use the Charter provision. This provision is used today for local preference.

Recently, at the request of local architects and engineers, staff revised several qualification criteria used in the selection process. The revisions will enable local architects and engineers to have a competitive level playing field with other firms. Unfortunately, the criterion has not been tested as of date. Other alternatives that City Council can consider are:

- 1) Change the ordinance to reduce the threshold to provide for local preference under the current \$50,000
- 2) Contact the Attorney General and inquire if he will withdraw prior objections to the local preference, in order to delete the footnote from the Charter,
 - Charter provision would proceed as it is,
 - Charter provision includes contracts for construction, materials, equipment, supplies and other directly or indirectly items paid for by public funds.
- 3) Revise the existing Charter provision on local preference or write a new local preference Charter provision; this requires going to a vote of the citizens of Yuma

Moore: The Charter defines 'local' as a vendor who is within the city limits and has a City of Yuma business license. A Charter change can be proposed by a Charter Review Committee, City Council, or a citizen or group of citizens; however, it is mandated that City Council approve the change before it appears on the ballot. The May 2010 election would be the first opportunity to get a Charter change before the voters.

Nicholls: What is required of City Council to bring this forward on the May election? **Moore:** City Council has to adopt the action at a Regular City Council meeting; there are three regular meetings left.

Pfannenstiel outlined bidding procedures:

- Formal Bids
 - Preferred method for acquiring products, services and construction for public use
 - Award is made to the lowest response/responsive bidder
 - Bid is based solely on the response to the criteria set forth in the bid invitation
 - Bids are always advertised
 - Discussions or negotiations are not allowed with the bidders
 - Sealed proposals are required
- Request for Quotations or Informal Bids
 - Generally utilized without advertising
 - Sealed proposals are also required
 - A minimum of 2-3 quotes for responsible suppliers is utilized if the expected dollar amount is relatively small but exceeds the minimum threshold of \$2,500, and requires some level of competitive bidding.
 - If an item is requested that exceeds \$2,500 in value, but is less than \$50,000, generally 3 quotes are obtained
 - For purchases above \$50,000, an advertisement is placed for a formal bid
- Competitive sealed bids meet the three basic principles of public procurement:
 - Public notice and public opening of bids as part of the process achieves openness
 - Fairness and efficiency are maintained by awarding contracts to the lowest responsive bidder

- Competition is assured by increasing the number of suppliers interested in bidding on public projects
- Request for Proposal (RFP)
 - A competitive procurement method allows the reviewer to consider factors other than price, such as higher qualifications, experienced project approach, innovation and creativity or value added services.
 - In order for the RFP to be used effectively all elements must be clearly defined in order to provide the supplier with a total understanding of the product/service that is being requested.
 - When an RFP is used price can be taken into consideration.
- Request for Qualifications (RFQ)
 - This method is generally used by the City for engineers, architects, construction manager at risk.
 - Competitive procurement method where the first respondents are pre-qualified based on the criteria contained in the solicitation notice.
 - Utilizing this method affords two options:
 1. Evaluation team reviews/scores the responses. Awards are granted to the highest ranking applicants
 2. Short-list is used and is reviewed/scored by an evaluation team. The highest ranking applicants are then given a new set of criteria and asked for an interview and presentation of the project.
 - There are times, based on the scoring of the RFQ, when there is a large difference in the 1st and 2nd ranked team. If this occurs, the City can make the decision to choose the top ranked team, without going through the interview process.
- Cooperative Agreements
 - The City uses several different Cooperative Agreements
 - Western States Contracting Alliance (WSCA), State Contract, Mohave Contract, Greater Houston Area Cooperative and several others for purchases of various commodities
 - Arizona has a very large cooperative agreement named Strategic Alliance for Volume Expenditures (SAVE)
 - Several cities and school agencies are also members
 - The City can utilize any contract from any agency member of SAVE to make purchases
 - Saves time and money and avoids going out for bid

Discussion

McClendon: Would the Cooperative Agreement process change if local preference is allowed?

Pfannenstiel: Cooperative Agreements can still be used for purchases. **McClendon:** If the Charter is changed, will the City be mandated to go with the local preference, even if a better fleet price is found out of town? **Pfannenstiel:** City Council would determine how to make the purchase first; either go out to bid or utilize a cooperative agreement. Once the decision is made the City cannot change the process for that purchase, even if a lower price is found. **Moore:** The City cannot compare prices for the two then choose between them. **Mayor Nelson** inquired about cancelling bids and rebidding.

Moore: Processes and bids can be cancelled and rebid, but the City cannot violate the intent of the state law. The City cannot break projects/purchases down into smaller components so the City doesn't

have to bid it; the City cannot construct any scenario that allows the system to be circumvented. If the City chooses to utilize a cooperative agreement to buy police vehicles, the cooperative agreement does not bind the City to use it again when the need for heavy duty trucks come up. **McClendon:** What happens if the City wants to use local preference and an outside vendor comes in lower than the local? **Moore:** According to state law, cost is not disclosed for bids for engineers; price is negotiated afterwards.

Johnson: There was past controversy with the City using State contracts for procuring police cars, so the City went out to bid. When the bids came in, even giving a 5% local preference to the local dealer, an out of town dealer's bid was substantially lower. **Stull:** Correct. The City has tried to offer local preference to our local dealers. However, once the City chooses to go out to bid, there are no restrictions as to who can submit a proposal. Past experience is that the out of town dealers were able to offer a bid much lower than the local dealers. The City cannot test the market; once the decision is made to go out to bid, the City cannot change its mind and use a State contract. **Watson:** The purpose of this discussion is to see if the City can direct more dollars to local vendors for services/products. The City does a large portion of local retail business through the use of procurement cards. **Moore:** The citizens of Yuma have spoken in favor of local preference since 1981 – the question at this point is where do Mayor and Council want to go from here? **Mayor Nelson** asked if staff would inquire if the Governor will sign off on removing the clause on the authorizing document? **Moore:** Yes, the only drawback is the timing. City Council may need to change the ordinance and approach the Governor and Attorney General and prepare a Charter change so that the City is moving forward on multiple alternatives at the same time.

Johnson noted that although bidding materials are sent to local businesses, as shown on the staff reports, there are times where the local businesses have not submitted bids. **Nicholls** noted that these are new and critical times; the City is likely to see more local bids. He further inquired what the City spends in a typical year in categories other than contracting, professional services and widget type procurement. **Wicks:** There is no easy dollar answer; it depends on the commodity, service and/or product. There is no set dollar amount for local versus non-local purchases. There are several procedural issues the City deals with to insure the bidding process is fair and above the board.

Johnson: Would it be possible to write the ordinance so that local businesses would receive preference on a RFQ and RFP also? **Moore:** After meeting with the local businesses that are covered by this statute, the City selection criteria was significantly modified to reflect similar issues such as local availability and immediate notice. Local vendors will have the upper hand on certain criteria. In reformatting the criteria, it has allowed for some local issues, other than just giving a 5-point local preference, regardless of their responsiveness. **Nicholls** pointed out the qualifications were written under the current Charter. If the Charter is amended, new qualifications can be included. Large firms have marketing staff that exceed the smaller companies. These firms find ways to meet criteria. His personal opinion would be to take out the ambiguity of all the other comments and give a straight local preference. **Watson:** One significant change included in the discussion was the knowledge of local conditions and factors; the criteria have now been adjusted to consider this. Local vendors understand these issues better and further demonstrate these qualifications when submitting bids. **Nicholls:** There are vendors who have worked in Yuma on a State procurement that will have knowledge of the local conditions.

Mayor Nelson requested a definition of local preference? **Moore:** Currently the Charter defines local preference/local dealer as someone inside the City limits that holds a City business license. This does

not preclude a Charter change, which creates different criteria. This language has not been changed since the Charter adoption in 1981. **Nicholls:** Can the City enhance the definition of local preference/local dealer to be more restrictive by defining the local address and adding a certain number of employees? **Moore:** The City Charter is like a constitution; approving an amendment is enabling authority. City Council can pass ordinances that enact the intent and purpose of the enabling document; which are pursuant to the Charter. The City cannot do something that is clearly outside the parameters of the Charter. The City could pass an ordinance to make the definition more restrictive; however, it can be subject to challenge. **Nicholls:** Is there anything preventing the City from changing the footnote of Ordinance O2090? **Moore:** The Governor signed off on the Charter amendment with the understanding that the City would adopt Ordinance O2090 which would govern the local preference. City Council can repeal or modify Ordinance O2090. **Mendoza:** Local questions that allow preference are very subjective; anyone can Google an area and find out information. **Johnson:** The City ends up spending more money on out of town/state vendors, due to travel costs for RFQ/RFP since cost is unable to be taken into consideration. **Moore:** State Statute provides that financial criteria is not considered until after the firm is selected. **Watson** reminded City Council any action to place a proposition on the spring election would need to be approved at the January meeting. The election costs will be split between the two franchise issues, which will save the City substantially. **Mayor Nelson** asked for the speakers on this item. **Moore** reminded City Council the state law allows for local preference to be on the agenda for discussion; any action taken needs to be provided to the public 24-hours in advance. If you chose to take action at tomorrow night's meeting to change language in the Charter – proper notification to the public has not occurred. City Council can give direction to staff of its intent so staff can properly post notification to the public.

Speakers

Ken Rosevear, Yuma County Chamber of Commerce. The State Purchasing Department informed him there are 13 Arizona cities that provide local preference; Sedona and Flagstaff give almost a 30-point spread for locals. Bottom line is the Chamber of Commerce is concerned with local dollars going out of town; keeping dollars in Yuma creates local jobs and increases the tax base. Rosevear cited a *Local Arizona First* study that shows tracking of the dollar and bottom line effects.

Chris Thompson, Patterson Thompson Architects, expressed concern of the large scale projects that can be completed by local qualified people but are sent out of town. Marketing firms send their A team to score the project and their B team to perform the project. Locals have to answer for their mistakes; out of town firms don't have the same investment. The criteria changes discussed seem fair; if it comes down to a point system, the local vendor is going to lose every time. The Charter states that City Council can decide what is best for the City of Yuma; consider the local investment with regards to local preference.

Clayton Hacey, Shaw Industries. The City needs to change their way of doing business. Local professionals are here to show their support for local preference. Yuma needs to act now and look long term – ultimately City Council has the power to do it.

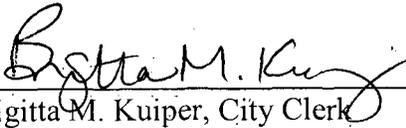
D.J. Shiplett, General Manager for CEMEX. CEMEX is in support of local preference, professionally and for the community benefits. CEMEX is a licensed contractor and competes on a regular basis. There are many businesses that will benefit from local preference.

V. CITY OF YUMA BOARDS, COMMISSIONS AND COMMITTEES - NONE

VI. ADDITIONAL ITEMS FOR POSSIBLE DISCUSSION - NONE

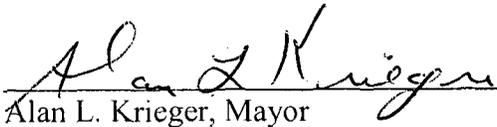
VI. ADJOURNMENT/EXECUTIVE SESSION

Motion (Beeson/Nicholls): To adjourn the meeting. Voice vote: **adopted** 7-0. The meeting adjourned at 7:17 p.m. No Executive Session was held.



Brigitta M. Kuiper, City Clerk

APPROVED:



Alan L. Krieger, Mayor

Approved at the City Council Meeting of: MAR 17-2010
City Clerk: 